

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

CASE NO.: 1:06-cv-286-JD

JAMES SCOTT; SUE SCOTT; STEPHEN)	
ST. LOUIS; and ELLEN ST. LOUIS; for)	
themselves and all others similarly situated;)	
)	
Plaintiffs;)	UPDATED AND CLARIFIED JOINT
)	MOTION FOR PRELIMINARY
)	APPROVAL OF CLASS ACTION
)	SETTLEMENT AGREEMENT AND
)	STIPULATION
v.)	
)	
FIRST AMERICAN TITLE INSURANCE)	
COMPANY;)	
)	
Defendant.)	

Plaintiffs, James and Sue Scott and Stephen and Ellen St. Louis (“Plaintiffs”), and Defendant, First American Title Insurance Company (“First American”), pursuant to Fed.R.Civ.P. 23(e)(2), jointly move for preliminary approval of a Class Action Settlement Agreement and Stipulation (the “Stipulation”) in this case. In support of the joint motion, the parties state as follows:

1. Plaintiffs commenced this putative class action lawsuit against First American in state court on July 1, 2006. On August 1, First American removed the case to this Court. After removal, Plaintiffs filed two amended complaints which added Stephen and Ellen St. Louis as named plaintiffs and asserted three causes of action against First American: breach of contract, breach of the implied duty of good faith and fair dealing, and unjust enrichment. First American moved to dismiss Plaintiffs’ second amended complaint, and this court granted that motion, in part, and gave Plaintiffs leave to file a

third amended complaint. Plaintiffs filed a third amended complaint asserting claims for unjust enrichment and breach of the implied covenant of good faith and fair dealing. The third amended complaint is currently pending before this Court.

2. On July 31, 2007, Plaintiffs and First American agreed to a classwide settlement of the claims of Plaintiffs and of the putative class. Because the settlement includes the class claims, it requires this Court's approval pursuant to Fed. R. Civ. P. 23(e).

3. All parties now jointly move the Court to give its *preliminary* approval of the settlement and the proposed class for the purpose of allowing notice to be issued to the members of the class, reserving to a Final Approval Hearing to be set by the Court the final decision as to the fairness and adequacy of the settlement, the amount of any attorneys' fees to be awarded to class counsel, and any additional awards to the representative Plaintiffs.

4. In support of their motion, the parties submit the following materials:

Exhibit 1 — *Plaintiffs'* Memorandum in Support of Updated and Clarified Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Stipulation, which consolidates all of the briefing in support of the three prior motions for preliminary approval of the settlement. This memorandum is filed by the Plaintiffs because First American, while fully supporting the settlement, cannot concur in all of Plaintiffs' assertions about the title insurance industry, the merits of the claims, or the certifiability of the class absent a settlement. Plaintiffs' memorandum in turn attaches as exhibits

(A) First American's new rate filing, (B) Plaintiffs' counsel's Work History, and (C) the Declaration of Edward K. O'Brien in Support of Settlement and Appointment of Class Counsel.

Exhibit 2 — The [Proposed] Order Granting Preliminary Approval of Class Action Stipulation of Settlement, (Exhibit E to the Stipulation of Settlement) with certain dates updated, which is the order that the parties request that the Court enter to grant this joint motion for preliminary approval.

Exhibit 3 — The executed Settlement Agreement and Stipulation among the parties dated July 31, 2007.

Exhibit 4 — The First Amendment to Stipulation of Settlement dated September 7, 2007.

Exhibit 5 — The Second Amendment to Stipulation of Settlement dated April 24, 2008.

Exhibit 6 — The Third Amendment to Stipulation of Settlement dated June 3, 2008.

Exhibit 7 — A Conformed Copy of Stipulation of Settlement (including, 1st, 2d, and 3d Amendments), which shows the text of the settlement agreement as it is amended by the three amendments, the only changes being in Sections V.A. 9, V.B. 2, and V.B. 6.

Exhibit 8 — The proposed Claim Form (Exhibit A to the Stipulation of Settlement) with the dates updated in light of the passage of time since the parties settled.

Exhibit 9 — The proposed Exclusion Form (Exhibit B to the Stipulation of

Settlement) similarly updated.

Exhibit 10 — The proposed Notice of Pendency of Class Action, Proposed Settlement and Final Hearing (Exhibit C to the Stipulation of Settlement) with the dates updated and the class period closed as of December 31, 2007, consistent with the Second Amendment to Stipulation of Settlement.

Exhibit 11 — The Release by Named Plaintiffs (Exhibit D to Stipulation of Settlement).

Exhibit 12 — The [Proposed] Final Order and Judgment (Exhibit F to the Stipulation of Settlement) with certain dates updated.

Exhibit 13 — The Summary Notice of Class Action, Proposed Settlement and Final Hearing (Exhibit G to Stipulation of Settlement) with dates updated and the class period closed as of December 31, 2007.

Exhibit 14 — Declaration of Carol Willoughby, dated January 14, 2008, in support of settlement.

Exhibit 15 — Declaration of Peter Caruso II, dated December 21, 2007, in support of settlement.

Exhibit 16 — Declaration of Richard A. Diamond, dated January 14, 2008, in support of settlement.

5. Accordingly, the parties jointly renew their request that this Court:
 - a. preliminarily approve the proposed Stipulation and all exhibits filed

therewith;

- b. enter the Proposed Order Granting Preliminary Approval of Class Action Settlement in the form submitted as Exhibit 2 to this motion which includes, among other things: (i) conditionally certifying the class for settlement purposes only; (ii) conditionally appointing Plaintiffs as class representatives authorized to act on behalf of the class; (iii) conditionally appointing the O'Brien Law Firm, PC, as counsel for the class as required pursuant to Fed.R.Civ.P. 23(g); and (iv) approving the appointment of the O'Brien Law Firm, PC to attend to publication of the Summary notice, mailings to potential class members, and administration of the settlement.
- c. authorize notice to issue to class members informing them of the settlement in the respective forms attached as Exhibits A, B, C and G to the Stipulation (as updated by this motion) and pursuant to the terms of the Stipulation;
- d. schedule a date and time for a final hearing to determine whether to approve the settlement as fair and reasonable;
- e. grant such other and further relief as this Court may deem just and reasonable.

Respectfully submitted,

James SCOTT, Sue SCOTT, Stephen
ST. LOUIS, and Ellen ST. LOUIS; for
themselves and on behalf of the putative
class members

By their attorneys,

/s/ Edward K. O'Brien
Edward K. O'Brien
O'Brien Law Firm, PC
One Sundial Avenue, 5th Floor
Manchester, NH 03103
(603) 668-0600

FIRST AMERICAN TITLE
INSURANCE COMPANY

By its attorneys,

/s/ Douglas W. King
Charles A. Newman
Douglas W. King
Elizabeth T. Ferrick
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-2730
(314) 259-2329

Wilbur A. Glahn, III
McLane, Graf, Raulerson & Middleton, P.A.
900 Elm Street, P.O. Box 326
Manchester, New Hampshire 03105-0326
(603) 625.6464

CERTIFICATE OF SERVICE

This is to certify that on September 25, 2008, the foregoing document was electronically
filed with the Clerk of Court using the CM/ECF system, which will automatically send e-mail
notification of such filing to all attorneys of record.

/s/ Douglas W. King